

Before the
Administrative Hearing Commission
State of Missouri



GREG MCKEAN,

Petitioner,

vs.

DIRECTOR OF REVENUE,

Respondent.

No. 14-1736 RS

DECISION

We dismiss Greg McKean's appeal because it was untimely filed.

Procedure

On October 30, 2014, McKean filed a complaint appealing a final decision of the Director of Revenue (Director) assessing penalties against his company for selling tangible personal property without a sales tax license. On November 18, 2014, the Director filed a motion to dismiss on the ground that McKean's appeal was untimely. We gave McKean until December 4, 2014, to respond, but he filed no response.

We may grant a motion for involuntary dismissal based on a preponderance of admissible evidence.¹ Admissible evidence includes an allegation in the complaint, discovery response of the petitioner, affidavit, or other evidence admissible under the law.² The Director filed the

¹ Regulation 1 CSR 15-3.436(3). All references to the CSR are to the Missouri Code of State Regulations as current with amendments included in the Missouri Register through the most recent update.

² *Id.*

affidavit of a custodian of records with his motion. We base our findings of fact on the contents of McKean's complaint and the Director's affidavit.

Findings of Fact for Purposes of this Order

1. The Director issued an assessment of penalties in the amount of \$10,000 directed to McKean, which was sent by certified mail on August 21, 2014.

2. The assessment is dated August 21, 2014, and states that it will become due and payable 60 days from the assessment date.

3. The assessment contains the following notification:

This is the Final Decision of the Director of Revenue. If you are adversely affected by this final decision, you may appeal to the Administrative Hearing Commission, Post Office Box 1557, Jefferson City, Missouri 65102-1557. To appeal, you must file a petition with the Administrative Hearing Commission within sixty (60) days after the date this decision was mailed or the date it was delivered, whichever date was earlier. If any such petition is sent by registered mail or certified mail, it will be deemed filed on the date it is mailed; if it is sent by any method other than registered mail or certified mail, it will be deemed filed on the date it is received by the commission as stated in Section 621.050.1, RSMo.

4. McKean filed his appeal on October 30, 2014.

5. October 30, 2014 was more than 60 days after August 21, 2014.

Conclusions of Law

This Commission has jurisdiction over appeals from the Director's final decisions.³

However, our jurisdiction comes from the statutes alone, and is bounded by those statutes.⁴

Section 144.261, which applies to appeals from sales tax assessments, states:

Final decisions of the director under the provisions of this chapter are reviewable by the filing of a petition with the administrative hearing commission in the manner provided in section 621.050, RSMo; except that, notwithstanding the provisions of section 621.050, RSMo, to the contrary, **such petition must be filed**

³ Section 621.050. Statutory references are to RSMo 2000, unless otherwise noted.

⁴ *State Bd. of Regis'n for the Healing Arts v. Masters*, 512 S.W.2d 150, 161 (Mo. App., K.C.D. 1974).

**within sixty days after the mailing or delivery of such decision,
whichever is earlier.**

The Director mailed her final decision to McKean on August 21, 2014. Although notified of his appeal rights, McKean filed his appeal on October 30, 2014 – more than sixty days after August 21, 2014. McKean’s untimely filing deprives us of authority to hear his appeal.

If we have no jurisdiction to hear the appeal, we cannot reach the merits of the case and can only exercise our inherent power to dismiss.⁵ Accordingly, we grant the Director’s motion.

Summary

We grant the Director’s motion to dismiss.

SO ORDERED on December 24, 2014.

\\ Sreenivasa Rao Dandamudi

SREENIVASA RAO DANDAMUDI
Commissioner

⁵ *Oberreiter v. Fullbright Trucking*, 24 S.W.3d 727, 729 (Mo. App. E.D. 2000).